

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
APR 20 2006

*[Signature]*  
CLERK

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DONALD LEO BEANER and  
GLORIA MAE BEANER, a living,  
sovereign Wo/man upon the Land,

Plaintiffs,

-VS-

JAN HOLMGREN individually, and as  
AGENT FOR FARM HOME  
ADMINISTRATION as AGENT FOR  
UNITED STATES OF AMERICA et. al,  
JOHN DOE, et al,

Defendants.

CIV 05-4095

MEMORANDUM OPINION  
AND ORDER

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Pending before the Court is the United States' Motion to Dismiss, Doc. 14, based upon failure to serve the United States in accordance with Fed.R.Civ.P. 4(i) and failure to serve Jan Holmgren in her individual capacity. Plaintiffs filed an Affidavit for Entry of Default, Doc. 13, contending that the Defendants were properly served and have failed to answer the complaint in the time allowed by the Federal Rules of Civil Procedure.

Plaintiffs contend that Assistant United States Attorney ("AUSA") Diana Ryan admitted service of the summons and complaint and that admission should entitle them to entry of default. The Admission of Service signed by Ms. Ryan, however, only admits service on behalf of the Farmers Home Administration and the United States, and explicitly notifies Plaintiffs that she is not authorized to admit service on Jan Holmgren in her individual capacity. Plaintiffs were also informed by letter from AUSA Michael Ridgway, dated September 29, 2005, that they needed to comply with the procedures to serve the Attorney General of the United States, pursuant to Fed.R.Civ.P. 4(i)(1)(B). AUSA Ridgway provided Plaintiffs with the address to serve the Attorney General. He further informed Plaintiffs that they needed to comply with Rule 4(i)(2)(A), for serving

a United States agency, corporation or officer sued in her official capacity and that they would need to comply with the requirements of Rule 4(i)(2)(B) to serve Ms. Holmgren in her individual capacity. (Doc. 14, Ex. 2.)

After Plaintiffs were informed they were required to comply with Rule 4(i) of the Federal Rules of Civil Procedure to properly effect service in this case, they apparently did not take further steps to comply with the service requirements of that rule. They have not filed a proof of service or waiver of service of the Attorney General of the United States or Jan Holmgren in her individual capacity. Thus, Plaintiffs have failed to establish that this action has been properly served in accordance with Fed.R.Civ.P. 4(i). This action was filed on June 29, 2005, and Plaintiffs have been on notice since on or about September 29, 2005, that they had not properly effected service in this case. The Court does not find good cause based upon the record for failure to comply with the service requirements in Fed.R.Civ.P. 4(i). Pursuant to Fed.R.Civ.P. 4(m), the Court will give Plaintiffs an opportunity to show good cause for their failure to comply with the service requirements of Rule 4(i). *See* Fed.R.Civ.P. 4(m).

Given the length of time Plaintiff has had to comply with the requirements of Rule 4(i), the Court finds pursuant to Rule 4(i)(3) that two weeks is a reasonable time to cure the failure to serve process in this case. If Plaintiffs fail to comply with the requirements for proper service upon the Attorney General of the United States and Jan Holmgren in her individual capacity, as directed by Fed.R.Civ.P. 4(i), this action will be dismissed. Accordingly,

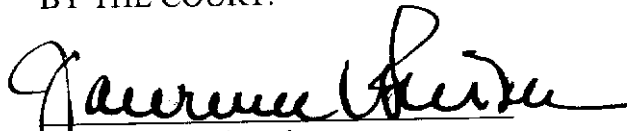
IT IS ORDERED:

1. That Plaintiff's Affidavit for Entry of Default, Doc. 13, is denied.
2. That, on or before May 4, 2006, Plaintiffs shall cure the failure to serve process in compliance with Federal Rule of Civil Procedure 4(i) or this action will be dismissed.

3. That, on or before May 4, 2006, Plaintiffs shall inform the Court of any grounds upon which they assert constitute "good cause for the failure" to comply with the service requirements of Fed.R.Civ.P. 4(i).

Dated this 20<sup>th</sup> day of April, 2006.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY

  
DEPUTY